

October 30, 2015

VIA EMAIL AND U.S. FIRST-CLASS MAIL

Dennis McLerran, Regional Administrator
EPA Region 10
1200 6th Avenue
Seattle, WA 98101
mclerran.dennis@epa.gov

RE: Portland Harbor Superfund Site/Remedy Review Board

Dear Mr. McLerran:

Pursuant to the Administrative Procedures Act, Pub. L. 79–404, 60 Stat. 237 (1946), the undersigned businesses (Commenters) respectfully request reconsideration of Region 10’s decision contained in the enclosed email communication from Kristine Koch dated October 23, 2015 (Koch Email), to decline to forward to the EPA Remedy Review Board (Board) comments that the Commenters submitted to EPA on October 19, 2015 (Comments) regarding the remedial process at the Portland Harbor Superfund Site (Site). The Commenters also request that Region 10 expedite processing of this reconsideration request because of the Board’s scheduled meeting to discuss the Site’s remedy on November 18-19, 2015.

The Koch Email states that the Comments were not transmitted to the Board because “[t]he only stakeholders who are allowed to comment to the [B]oard are DEQ, Tribes, the Portland Harbor CAG, and the LWG in accordance with guidelines set forth by the Board.” The Koch Email does not identify the “guidelines set forth by the Board” on which Region 10 relied to reach this decision. The Commenters’ cover letter to the Comments (Cover Letter) identified the following guidance as relevant to the Commenters request that Region 10 forward the Comments to the Board: EPA, Memorandum re National Remedy Review Board (Sept. 26, 1996), attached to the Comments (“Guidance”). For purposes of this reconsideration request, the Commenters assume the Koch Email’s reference to “guidelines” meant the Guidance. Please advise us whether this assumption is correct.

The Guidance states in pertinent part:

The Board believes that PRPs who conduct the RI/FS can provide valuable input to the review process. Therefore, the Regional RPM is to solicit technical comment or discussion, well before the Board meetings, from the PRPs that are substantively involved in conducting the RI/FS. These submissions ... should be attached to the informational site package provided to all Board members.

....

The Board recognizes that PRPs who do not conduct the RI/FS may conduct studies that might also be valuable to the Board’s review process. In these cases, the Region may, at its discretion, solicit similar input from these stakeholders.

Id. at 3-4.

As noted in the Cover Letter, the Commenters are “PRPs that are substantively involved in conducting the RI/FS process,” so the Comments “should be attached to the informational site package provided to all Board members.” *Id.* The Cover Letter explains why the Commenters are within this category of PRPs:

[E]ach Commenter has voluntarily expended substantial resources participating in the EPA-initiated Portland Harbor Participation and Common Interest Group, which is conducting a nonjudicial allocation of liability among PRPs to create a settlement framework for funding the Site response action, including the costs of the Remedial Investigation (RI) and Feasibility Study (FS) Reports (RI/FS). In addition, individual Commenters have funded and conducted, among other things, the data collection and analysis described in [the Comments] and extensive stakeholder input at every step of the RI/FS process.

In addition, a majority of the Commenters have already paid substantial sums to the LWG to fund the RI/FS process. These Commenters’ agreement to make financial contributions toward RI/FS costs averted litigation, which would have further slowed or even stalled the remedial process at Portland Harbor.

Region 10’s obligation to forward comments submitted by this category of PRPs is not discretionary, as the Guidance makes no reference to discretion in this paragraph, in sharp contrast with the following paragraph of the Guidance quoted above. The Koch Email does not dispute the facts set forth above establishing that the Commenters qualify or make findings of fact to the contrary, or even explain why Region 10 concluded that the Commenters did not fall within this category of PRPs. Thus, we reiterate our request that Region 10 adhere to the Guidance and forward the Comments to the Board.

The Commenters also fit within the second category of PRPs identified by the Guidance, PRPs that “conduct studies that might also be valuable to the Board’s review process.” We recognize that the Region has discretion with respect to comments submitted by these PRPs, but we believe there are sound public policy reasons supporting our reconsideration request and urge Region 10 to exercise its discretion to forward the Comments to the Board. As noted above, individual Commenters have funded and conducted data collection and analysis *requested by EPA* to fill data gaps in the RI/FS. These Commenters have presented these data to EPA and DEQ and shared their analyses. Thus, the Commenters are precisely the type of PRP identified in the Guidance as potentially “valuable to the Board’s review process.”

Lastly, Region 10’s decision not to forward the Comments is simply contrary to common sense and good governance. The Guidance recognizes that the Comments are potentially valuable to the Board. The Comments are only five pages long, so the additional burden on the Board’s members of reviewing them is minimal. And the Commenters have a substantial interest in the Site’s remedy, as EPA will be asking them to fund it, along with sharing in additional amounts toward the RI/FS costs, beyond the substantial amounts individual Commenters have already contributed. The White House’s webpage sums it up:

My Administration is committed to creating an unprecedented level of openness in Government. We will work together to ensure the public trust and establish a

system of transparency, public participation, and collaboration. Openness will strengthen our democracy and promote efficiency and effectiveness in Government.

President Obama, Jan. 11, 2009, available at <https://www.whitehouse.gov/open>. An open process is critically important to a successful cleanup of Portland Harbor.

If you would like to discuss this reconsideration request further with the Commenters, please contact J.W. Ring at jwring@ringbenderlaw.com or (503) 964-6723.

Respectfully submitted,

Air Liquide USA LLC
Atlantic Richfield Company
BAE Systems San Diego Ship Repair Inc.
BP West Coast Products LLC
Exxon Mobil Corporation
Schnitzer Steel Industries, Inc.
The Marine Group LLC

enc.

From: Koch, Kristine <Koch.Kristine@epa.gov>
Sent: Friday, October 23, 2015 2:09 PM
To: Christine Hein
Cc: Cora, Lori; J.W. Ring; Karen Reed; Mark Strandberg; Lynn Treat
Subject: RE: Portland Harbor- Comments to the National Remedy Review Board from Certain Interested PRPs

Thank you for taking the time to submit comments; however, they did not get transmitted to the NRRB and CSTAG. The only stakeholders who are allowed to comment to the board are DEQ, Tribes, the Portland Harbor CAG, and the LWG in accordance with guidelines set forth by the Board. Even though your comments will not be considered by the Board, the Region will consider them in finalizing the FS and developing its Proposed Plan.

Regards,

Kristine Koch
Remedial Project Manager
USEPA, Office of Environmental Cleanup

U. S. Environmental Protection Agency
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Seattle, Washington 98101-3140

(206)553-6705
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From: Christine Hein [<mailto:CHein@ringbenderlaw.com>]
Sent: Monday, October 19, 2015 4:33 PM
To: Koch, Kristine
Cc: Cora, Lori; J.W. Ring; Karen Reed; Mark Strandberg; Lynn Treat
Subject: Portland Harbor- Comments to the National Remedy Review Board from Certain Interested PRPs

Dear Ms. Koch:

Attached please find comments prepared by the following parties which have been named as Potentially Responsible Parties (PRPs) at the Portland Harbor Superfund site: Air Liquide USA LLC; Atlantic Richfield Company; BAE Systems San Diego Ship Repair Inc.; BP West Coast Products LLC; Exxon Mobil Corporation; Schnitzer Steel Industries, Inc.; Shaver Transportation Company; and The Marine Group, LLC.

Please confirm that you will pass these comments along to the members of the National Remedy Review Board along with the informational site package.

Thank you,
Christine

Christine L. Hein



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